



08 APR 2008

ROETZEL AND ANDRESS  
222 SOUTH MAIN STREET  
AKRON OH 44308

In re Application of	:	DECISION ON PETITION
DANIEL J. SMITH	:	
Application No.: 10/565,573	:	UNDER 37 CFR 1.137(a)
PCT No.: PCT/US04/23867	:	
Int. Filing Date: 26 July 2004	:	
Priority Date: 25 July 2003	:	
Attorney Docket No.: 0894980480US	:	
For: STABILIZATION AND IONIC TRIGGERING	:	
OF NITRIC OXIDE RELEASE	:	

This is a decision on applicant's petition under 37 CFR 1.137(a) filed in the United States Patent and Trademark Office (USPTO) on 31 December 2007.

#### **BACKGROUND**

On 23 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 05 February 2007, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration, after the thirty month period was required.

On 07 December 2007, a Notification of Abandonment was mailed to applicant, indicating that applicant had failed to respond to the Notification of Missing Requirements within the time period set therein.

On 31 December 2007, applicant filed the instant petition to revive the application abandoned unavoidably.

#### **DISCUSSION**

Applicant submitted a petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application. A review of the documents submitted by applicant reveal that applicant submitted a response to the Notification of Missing Requirements on 26 February 2007. However, the documents referenced an incorrect U.S. serial number. Applicant cannot claim that such error was unavoidable. Therefore, the petition under 37 CFR 1.137(a) is DISMISSED as moot.

Among the papers filed by applicant on 26 February 2007 were "Transmittal Sheet", Response to Notification of Missing Requirements", "Combined Declaration and Power of Attorney", postcard receipt and a copy of the 05 February 2007 Notification of Missing Requirements. The transmittal sheet, postcard receipt and Response bore an incorrect U.S. serial number 10/564,573. These papers were filed in U.S. application file 10/564,573.

On 31 December 2007, after receiving a Notification of Abandonment, applicant filed the instant petition indicating that a response to the Notification of Missing Requirements was filed on 26 February 2007 providing a copy of the USPTO date-stamped postcard receipt and a copy of the papers filed therein. The postcard receipt bore the incorrect U.S. serial number 10/564,573 as did the transmittal letter and response.

A review of U.S. application 10/564,573 reveals that the papers filed by applicant on 26 February 2007 are contained therein.

Applicant's instant petition will be treated as a petition under 37 CFR 1.182 to correct the application number on the submission of 26 February 2007. Applicant filed a response to Notification of Missing Requirements which incorrectly referenced 10/564,573 rather than 10/565,573. However, a copy of the Notification of Missing Requirements filed referenced 10/565,573 accompanied the response. The application number will be corrected to 10/565,573


The \$400 petition fee for a petition under 37 CFR 1.182 will be charged to applicant's deposit account per their authorization.

#### CONCLUSION

Applicant's petition under 37 CFR 1.137(a) is **DISMISSED as moot**. The petition under 37 CFR 1.182 to correct the application no. to 10/565,573 on the papers filed on 26 February 2007 is **GRANTED**. The 07 December 2007 Notification of Abandonment is hereby **VACATED**.

A review of the declaration indicates that it meets the requirements of 37 CFR 1.497(a) and (b) and is acceptable.

This application is being returned to the United States Designated/Elected Office for processing in accord with this decision, including correcting USPTO records so as to identify the papers filed on 26 February 2007 in **10/565,573**. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **26 February 2007**.

  
Cynthia M. Kratz  
Attorney Advisor  
PCT Legal Affairs  
Office of Patent Cooperation Treaty  
Legal Administration

Telephone: (571) 272-3286  
Facsimile: (571) 273-0459